



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM
AND
THE HONOURABLE MRS. JUSTICE R. THARANI

Writ Petition (MD) No. 9134 of 2015

Sp. Krishnan

.. Petitioner

Vs.

1. The District Collector,
Sivagangai,
Sivagangai District.

2. The Thasildhar,
Ram Nagar,
Devakottai,
Sivagangai District.

3. R. Sebasthi Nadar

4. A. Soosaiappan

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the 2nd respondent to act on the proceedings No. Na.ka.E4/25956/2013 dated 08.09.2014 passed by the 1st respondent calling upon him to remove the encroachment made by the 3rd respondent in Survey Nos. 174/5 and 174/10 Keeranipatti village, Managiri Post, Karaikudi Taluk, Sivagangai District classified as public pathway.

For Petitioner
For Respondents

: Mr. M. Jerin Mathew
: Mr. Aayiram K. Selvakumar
Addl. Govt. Pleader for RR-1 & 2
Mr. S. Kameswaran for R-3
No appearance for R-4

ORDER

[Order of the Court was made by **K. KALYANASUNDARAM, J**]

The writ petition has been filed praying for issuance of writ of Mandamus, directing the 2nd respondent to remove the encroachment made by the 3rd respondent in Survey Nos. 174/5 and 174/10



Keeranipatti village, Managiri Post, Karaikudi Taluk, Sivagangai District classified as public pathway.

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2.The case of the petitioner is that the fourth respondent has filed a suit against the third respondent for mandatory injunction on the basis that the third respondent has encroached on the public pathway. Though he succeeded in the second appeal, encroachment has not been removed. Hence, the present writ petition has been filed.

3.It is submitted by the learned counsel for the third respondent that in the execution petition filed by the fourth respondent in E.P.No.106/2013, an application was filed to dismiss the E.P and against the order of dismissal of the E.A, the third respondent has filed a Civil Revision Petition No.894/2015 and this Court had granted an order of interim stay.

4.Heard both and perused the available materials on record.

5.Though the petitioner has relied upon the judgment and decree passed by the Civil Court, while seeking relief in the writ petition, it is now contended that the cause of action for filing writ petition is totally different and pendency of civil revision petition cannot be a ground to reject the writ petition. We are unable to agree with the submission of the learned counsel for the reason that pending civil revision petition filed by the third respondent, this Court granted an order of stay. Hence, it would not be appropriate to issue a direction to remove the encroachment, as per the decree of the Civil Court.

6.It is pertinent to note that the suit was instituted in the year 2001 and the application filed by the judgment debtor was dismissed in the year 2015, however for more than fifteen years, the petitioner kept mum and immediately after grant of stay in the execution proceedings, the present writ petition came to be filed.

6.For the above stated reasons, the writ petition is dismissed as devoid of merits. No costs.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The District Collector,
Sivagangai,
Sivagangai District.

2.The Thasildhar,
Ram Nagar,
Devakottai,
Sivagangai District.

+1cc to M/s.Special Government Pleader,SR.No. 52720

+1cc to Mr.S.Kameswaran, Advocate, SR.No.52555

+1cc to Mr.M.JERIN MATHEW, Advocate, SR.No.53051

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VS
KK/SAR/02.04.2019/ 3P- 6C